

**MAINTENANCE SERVICES AGREEMENT BETWEEN  
THE CITY OF LOS ALTOS, CALIFORNIA  
AND  
ASSOCIATION OF THE LOS ALTOS HISTORICAL MUSEUM  
FOR  
MAINTENANCE AND OPERATION OF THE LOS ALTOS  
HERITAGE ORCHARD**

**THIS AGREEMENT** is made and entered into as of the 1st of July, 2023, by and between the CITY OF LOS ALTOS, a municipal corporation, hereinafter referred to as “CITY,” and ASSOCIATION OF THE LOS ALTOS HISTORICAL MUSEUM, DBA LOS ALTOS HISTORY MUSEUM (hereinafter LAHM), a California Corporation, hereinafter referred to as “**CONTRACTOR.**”

**RECITALS**

**WHEREAS**, CITY, desires to retain a qualified CONTRACTOR for maintenance and operation of the Los Atos Heritage Orchard (the “Project”); and

**WHEREAS**, the vision for the Heritage Orchard, a Los Atos City Landmark, is to protect an irreplaceable historic remnant of the “Valley of Heart’s Delight” for the recognition, conservation, enhancement and use by communities visiting the Civic Center.

**WHEREAS**, the orchard has been in continuous production since it was planted by J. Gilbert Smith beginning in 1901. The land was deeded to the City of Los Atos in 1954 with the understanding that the trees within the Civic Center landscape would be maintained in perpetuity as a working orchard for the benefit of future generations and to promote a sense of place with an appreciation of the innovative agricultural heritage of the city.

**WHEREAS**, the Heritage Orchard has been managed under a contractual agreement between the City and a series of orchardists (J. Gilbert Smith, Don Speciale, Phil Doetsch), with the agreement that the orchardist has the right to market the fruit.

**WHEREAS**, the City owns the land on which the Heritage Orchard and the LAHM are located, with an agreement that LAHM manage the J. Gilbert Smith residence, surrounding landscape with outdoor agricultural exhibits and the museum building that displays indoor exhibits.

**WHEREAS**, in 1981, the Los Atos City Council designated the Civic Center Apricot Orchard as a Historical Landmark (Resolution No. 81-23). The landmark boundaries of the Civic Center Apricot Orchard were clarified in 1991 (Resolution No. 91-31), with a map (Exhibit A) describing the orchard as bounded by San Antonio (west), the Youth Center (east), the Library (south) and the Parking lot (north). The same orchard boundaries are listed in the State of California Primary Records for the Civic Center Orchard (HRI #15) and J. Gilbert Smith House (HRI #80). Currently, the online Los Atos Historic Resources Inventory (accessed 3/11/2023) lists two landmarks: (a) Civic Center

Apricot Orchard (1 N. San Antonio Rd) and (2) J. Gilbert Smith House (51 S. San Antonio Rd). However, the full document Los Altos Historical Resources Inventory, dated 2012, lists as a City Landmark only the J. Gilbert Smith

House (No. 13), not the Orchard (page III-1).

**WHEREAS**, the Heritage Orchard provides context for the J. Gilbert Smith House/Los Altos History House Museum, which was designated a California Point of Historical Interest (#P692) in 1987 under the California Environmental Quality Act.

**WHEREAS**, the Los Altos History Museum has a mission to contribute to the stewardship and appreciation of the historical assets of Los Altos by providing engaging educational programs and exhibits. Since 1977, LAHM has raised matching funds for repair of the J. Gilbert Smith House, maintained the interior, expanded the outdoor educational exhibit and provided associated educational programs. Since 2019 the museum has led community efforts to enhance the educational value of the Heritage Orchard with signage and programs.

**WHEREAS**, despite recommendations in 2006, 2007 and 2019 to conserve water and improve tree health by installing a drip irrigation system, the outdated irrigation system has not been renovated. Although dead trees have been removed and replaced, only 59% of the original number of 444 tree locations were occupied with trees in August 2022.

**WHEREAS**, in 2019, LAHM formed the Orchard Commons Committee to facilitate communication about best practices for maintaining the quality of this living asset, by providing a forum for exchange of information among the orchardist, the museum, the city, the Historical Commission and experts with horticultural knowledge. In 2020, this Committee produced the Los Altos Heritage Orchard Best Practices Guidelines.

**WHEREAS**, in 2021, LAHM was awarded a Mini-Grant from Valley Water to provide water-wise educational outreach and to install a pilot drip irrigation system in collaboration with the CITY. The intent of the pilot study was to investigate the most effective and feasible design of a water-wise irrigation system for the site, prior to the subsequent extension of the irrigation system to the entire orchard (pending availability of additional funds). The completion date has been extended to July 2023 with the understanding that the details will be renegotiated given the unforeseen circumstances that delayed the project. CITY intends to uphold its part of the agreement to install a pilot project to determine the best design for water-wise irrigation.

**WHEREAS**, by means of public/private funding supporting contractual agreements, LAHM proposes to provide oversight services to the CITY with the goal of maintaining, restoring and renovating the Heritage Orchard in a manner that provides an appealing working landscape facilitating a sense of place and civic pride in connecting the downtown, the Civic Center and the Community Center.

**NOW, THEREFORE**, in consideration of the covenants, conditions and promises hereinafter contained, to be kept and performed by the parties hereto, it is agreed as follows:

1. **SCOPE OF SERVICES.**
  - A. **CONTRACTOR.** CONTRACTOR shall assist the CITY by executing the following scope of services in a satisfactory and proper manner in accordance with requirements provided by the City Manager, or designee. Services will include, but not be limited to, the items noted in CONTRACTOR'S proposal, identified as "LAHM RESPONSIBILITIES" attached hereto and incorporated herein as Exhibit A.
  - B. **CITY.** CITY will provide all services identified as "CITY RESPONSIBILITIES" attached hereto and incorporated herein as Exhibit A.
2. **SCHEDULE.** The CONTRACTOR shall begin work July 1, 2023.
3. **TERM.** The term of this Agreement shall continue in full force and effect between July 1, 2023 and June

30,2026. The CITY and the CONTRACTOR by mutual agreement, may renew the contract for an additional two (2) years effective July 1,2026 if service levels are satisfactory.

4. **COMPENSATION.** CONTRACTOR'S total compensation for the services set forth for the Contract shall not exceed \$75,000 annually as specified in Exhibit B.
5. **INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the Agreement insurance as described in Exhibit C against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.
6. **OWNERSHIP OF DOCUMENTS.** Not applicable.
7. **COMPLIANCE WITH LAW.** CONTRACTOR shall comply with all applicable federal, state and local laws, codes, ordinances and regulations, including Cal/OSHA requirements. CONTRACTOR represents to CITY that it has, and will maintain through the term of the Agreement, all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for CONTRACTOR to provide contracted services. CONTRACTOR shall maintain a City of Los Altos Business License.
8. **STATUS OF CONTRACTOR.** The parties intend that CONTRACTOR, in performing the services herein specified, shall act as an independent contractor, and shall have control of the work and the manner in which it is performed. CONTRACTOR is not to be considered to be an agent or employee of CITY, and is not entitled to participate in any pension, insurance, bonus, or other similar benefit plan CITY provides its employees. In the event that CITY exercises its right to terminate this Agreement as provided herein, CONTRACTOR expressly agrees that CONTRACTOR shall have no recourse of right of appeal under rules, regulations, ordinances, or laws applicable to CITY employees.
9. **STANDARD OF CARE; PERFORMANCE OF EMPLOYEES.** CONTRACTOR'S services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.
10. **INDEMNIFICATION.** To the fullest extent permitted by law, CONTRACTOR shall defend (with counsel reasonably approved by CITY), indemnify and hold CITY, the City Council, members of the City Council, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of CONTRACTOR or CONTRACTOR'S officers, assistants, subcontractors, employees or agents in connection with the performance of CONTRACTOR'S services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent CONTRACTOR'S services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR. CONTRACTOR'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CITY, the City Council, members of the City Council, its employees, or authorized volunteers.
11. **CALIFORNIA LABOR CODE REQUIREMENTS.** CONTRACTOR is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" or "maintenance"

projects. The services are being performed as part of an applicable “public works” or “maintenance” project, as defined by the Prevailing Wage Laws. Unless CONTRACTOR provides the CITY with a letter representing and warranting that CONTRACTOR satisfies the criteria in Section Labor Code 1720.4, and explaining the manner in which those criteria are met, CONTRACTOR agrees to fully comply with such Prevailing Wage Laws, if applicable. CONTRACTOR shall defend, indemnify and hold the CITY, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the CONTRACTOR and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771,1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Section 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

Except as otherwise set forth above, pursuant to Labor Code Sections 1725.5 and 1771.1, CONTRACTOR and all subcontractors performing such services must be registered with the Department of Industrial Relations. CONTRACTOR shall maintain registration for the duration of the Project and require the same of any subcontractors , as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be CONTRACTOR’S sole responsibility to comply with all applicable registration and labor compliance requirements.

12. **TERMINATION** ■ Notwithstanding any other provision of this Agreement, the CITY may terminate this Agreement at any time by giving ten (10) days written notice to CONTRACTOR. In said event, CONTRACTOR shall be paid for services performed as of the date of notice of termination.
13. **MAINTENANCE OF RECORDS**. Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by CONTRACTOR and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under this Agreement for inspection by CITY.
14. **NOTICES**. Any notice, demand, request, consent, approval, or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other part at the address set forth herein below. Eitherparty may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within48 hours from the time ofmailing it mailed as provided in this section. Notice may also

be given by electronic means but shall be deemed given only if receipt is acknowledged in writing by the receiving party.

**CITY:** City of Los Altos  
Gabe Engeland, City Manager  
1 N. San Antonio Road Los Altos, CA 94022

**CONTRACTOR:**  
  
Elisabeth Ward  
Executive Director Los Altos History Museum 51 S. San Antonio  
Road Los Altos, CA 94022

15. **CLAIMS RESOLUTION**. Notwithstanding any other provision herein, all public works claims that may arise between CONTRACTOR and CITY shall be resolved pursuant to the claims resolution process set

forth in Public Contract Code section 9204. Furthermore, the resolution of claims of \$37 5,000 or less shall also comply with the claims resolution procedures set forth in Public Contract Code section 20104 et seq.


16. **PARTIAL INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
17. **BINDING.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and successors-in-interest to the parties hereto.
18. **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other party of any provisions hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
19. **ASSIGNMENT.** CONTRACTOR shall not assign, delegate, nor transfer any interest in or duty under this Agreement without the prior written consent of CITY, and no transfer shall be of any force or effect whatsoever unless and until CITY has so consented.
20. **TAXES.** CONTRACTOR agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold CITY harmless from any liability which it may incur to the United States of America or the State of California as a consequence of CONTRACTOR'S failure to pay, when due, all such taxes and obligations. In the event CITY is audited for compliance regarding withholding or other applicable taxes, CONTRACTOR agrees to furnish CITY with proof of payment of taxes on these earnings.
21. **DEFAULT.** In the event CONTRACTOR fails to provide the services set forth in this Agreement due to the fault of CONTRACTOR, CITY shall have the right to either do the work itself or hire an outside CONTRACTOR to perform those services.
22. **TIME OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.

23. **CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS.** CITY reserves its right to employ other contractors in connection with this Project or other projects.
24. **APPLICABLE LAW AND FORUM.** This Agreement shall be construed and interpreted according to the laws of the State of California in any action to enforce the terms of this Agreement or for the breach thereof, and shall be brought and tried in the County of Santa Clara, California, notwithstanding Code of Civil Procedure Section 394, or any other law.
25. **NONDISCRIMINATION.** CONTRACTOR shall not discriminate against applicants, employees, or volunteers, on any basis prohibited applicable law.
26. **CONSTRUCTION.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in the manner that avoids any violation of statute, ordinance, regulation or law.
27. **INTEGRATION.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by CONTRACTOR for CITY, and contains all the covenants and agreements between the parties with respect to the tendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed by the party to be charged. If there is any conflict in the terms of this Agreement with the exhibits or attachments, then the provisions of this Agreement shall control.

[SIGNATURES ON FOLLOWING PAGE]

**CITY OF LOS ALTOS:**

APPROVED AS TO CONTENT:

  
Manny Hernandez (Aug 1, 2023 16:15 PDT)


Manny Hernandez  
Parks and Recreation Director

APPROVED AS TO FORM:

  
jolie houston (Aug 1, 2023 16:17 PDT)

Jolie Houston  
City Attorney

AGREED:

  
Gabriel Engeland (Aug 1, 2023 16:25 PDT)

Gabe Engeland  
City Manager

Aug 1, 2023

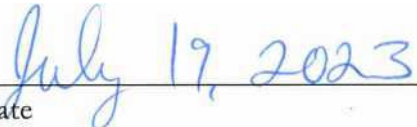
Date

**CONTRACTOR:**

  
\_\_\_\_\_  
Elisabeth Ward

Los Altos History Museum Executive Director

Date



## EXHIBIT A

### RESPONSIBILITIES

#### CITY

1. CITY shall communicate with LAHM on operations, projects, and construction that impact the immediate orchard area, and to set up systems to enhance the efficient flow of information on a need-to-know basis. CITY shall clarify the channels of communication between staff at the CITY, Library and LAHM, such that there is timely exchange of information about all activities that might affect utilities buried in the orchard, maintenance or expansion of the footprint of existing buildings or landscaping features.
2. CITY shall honor previous commitments regarding the installation of a water-wise irrigation system, as part of the CITY and LAHM joint grant application to Valley Water, which also meets the goals of the sustainability and Climate Action Plan initiatives of the CITY.
3. CITY authorizes LAHM to make decisions that maintain and upgrade the quality of care for the living resources within the Heritage Orchard landscape, in accordance with the Heritage Orchard Master Plan to be completed by LAHM and approved by the CITY within six (6) months of the signature of this agreement. The components of this Master Plan shall include (but not be limited to): (a) irrigation, (b) pruning and stump removal, (c) cover crop and soil enhancement, (d) tree replacement, (e) apricot harvest, (f) integrated pest management, (g) esthetic appearance, and (h) renovations to support, accessibility and visitor enjoyment. The Master Plan shall clarify workplans for the following time frames: (a) annual and (b) 4-year.
4. CITY authorizes LAHM to take the lead in using an adaptive management framework for implementing the Heritage Orchard Master Plan, to maintain flexibility in response to a changing environment (climatic, social and fiscal).
5. CITY authorizes contractors hired by LAHM and volunteers certified by LAHM to have access to the Heritage Orchard along designated routes to conduct the tasks specified in the Heritage Orchard Master Plan (as updated). City requires all persons working on the Civic Center properties to be covered by liability insurance.
6. CITY authorizes LAHM to take the lead on proposing and gaining approval for any alterations with a soft footprint that will enhance education without reducing the capacity of the orchard to sustain the original number of trees (444), including but not limited to sites that would facilitate gatherings, gardening and leisure activities.
7. CITY shall provide utilities including water and collection of garbage and organic matter. As available, CITY shall provide wood chips for use in mulching irrigation lines along rows of trees. All of the foregoing shall be subject to funding designated for such purposes in CITY's Service and Financial Plan.
8. CITY shall provide LAHM a fixed annual contribution of Seventy-five thousand dollars (\$75,000) for contracts to allocate as appropriate among administration, maintenance, restoration, renovation, and participation in adaptive management of the orchard landscape.
9. CITY shall collaborate with LAHM in attaining matching funds from municipal sources such as, but not limited to, the Parks in Lieu Fund, and Capital Outlay.



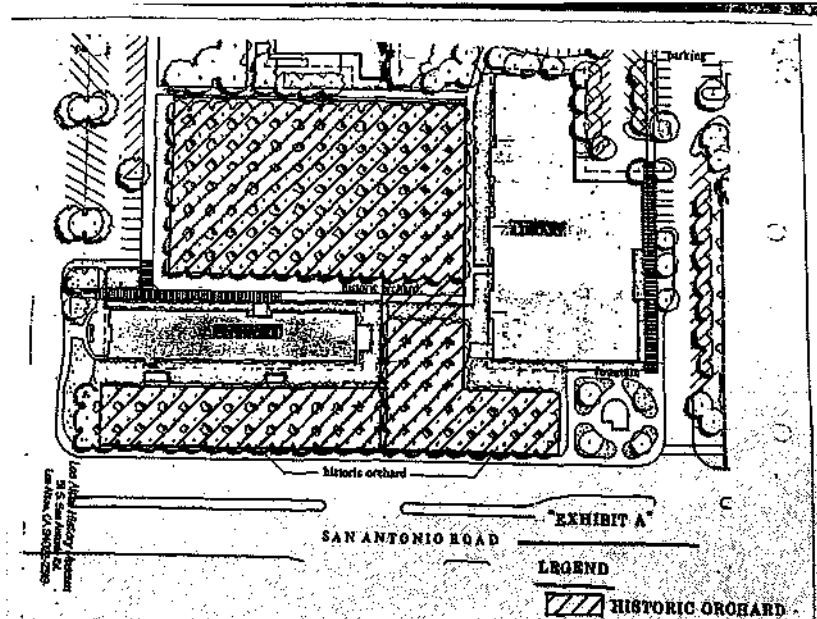
10. CITY expects that the renovation of the orchard based on the annual and 4-yr work plans will showcase the beauty and use of the Heritage Orchard to boost civic pride in preparation for the 75th Anniversary Celebration of Los Altos.

#### LAHM

1. LAHM shall provide the leadership in preparation of a Heritage Orchard Master Plan that addresses, but is not limited to, the following topics: (a) irrigation, (b) pruning and stump removal, (c ) cover crop and soil enhancement, (d) tree replacement, (e) apricot harvest, (f) integrated pest management, (g) esthetic appearance, and (h) renovations to support, accessibility and visitor enjoyment.
2. LAHM shall design and implement a plan for equitable distribution of the harvest in a manner that cultivates the goodwill of residents while considering personal safety, structural integrity of trees and financial sustainability.
3. LAHM shall be solely responsible for management operations (except as provided in CITY'S Responsibilities above) to maintain the Heritage Orchard as agreed upon in the Heritage Orchard Master Plan as updated annually.
4. LAHM shall be responsible for utilizing the established channels of communication to minimize the burden on City staff time, while keeping the CITY informed of all changes in activities on CITY property.
5. LAHM shall provide administrative personnel to arrange for all aspects of contracting services as needed to arrange for qualified persons to implement, monitor, review and revise the care of the orchard as outlined in the Heritage Orchard Master Plan with annual updates. Ultimate responsibility will lie with the LAHM Executive Director.
6. LAHM shall be responsible for ensuring that all contracts meet the standards of the CITY, including provisions for liability insurance, compliance with state and federal labor laws, purchases (i.e. trees, supplies) and availability of equipment.
7. LAHM shall be responsible for recruitment, training, supervision and scheduling of all volunteers, docents and interns engaged in orchard care.
8. LAHM shall be responsible for ensuring that all persons engaged in orchard care shall be covered by liability insurance and/or liability waivers.
9. LAHM shall be responsible for collaborating with CITY departments that also use, or potentially use, the Civic Center landscape, including the Library, Recreation and Community Services, Maintenance, Police and those with offices in City Hall.
10. LAHM is authorized to undertake fundraising drives for optional renovations and programs as appropriate.
11. LAHM shall cover the orchard in the financial report to the CITY due ninety (90) days after the close of LAHM's fiscal year.
12. LAHM shall utilize all funds received from the CITY for implementation of the Heritage Orchard Master Plan. LAHM shall account for such funds in accordance with designated gift procedures.
13. LAHM shall seek prior written approval of the CITY before installing any permanent structures (e.g. fence, barrier, sign).
14. LAHM shall extend to include orchard activities its existing two million dollar (\$1,000,000/\$2,000,000)

liability insurance policy, covering CITY and its officers, agents, and employees as additional insureds. CITY shall be provided with a contractual liability endorsement.

15. LAHM expects that the renovation of the orchard will showcase the beauty and use of the Heritage Orchard to boost civic pride in preparation for the 75th Anniversary Celebration of Los Altos.
16. LAHM considers the boundaries of the Historical Landmark to be as designated in the following figure attached to Resolution 91-31.



**EXHIBIT B**

**VENDOR FEES and PAYMENT MILESTONES**

**Total Annual Contract Services: \$75,000**

**Itemized Fees: N/A**

**Project Payment Schedule:**

<b><u>Milestone</u></b>	<b><u>Amount of Payment</u></b>
<b>Annual Payment Beginning July 1, 2023</b>	<b>\$75,000</b>

## EXHIBIT C

### INSURANCE

CONTRACTOR shall provide its insurance broker(s) /agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements to: **Project Manager, City of Los Altos, 1N. San Antonio Road, Los Altos, CA 94022**

#### Minimum Scope of Insurance

Coverage shall be *at least as broad as*:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, with limits no less than **\$1,000,000 or \$2,000,000 aggregate** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following:
  - a. Bodily Injury and Property Damage
  - b. Personal Injury/Advertising Injury
  - c. Premises/Operations Liability
  - d. Products/Completed Operations Liability
  - e. Aggregate Limits that Apply per Project
  - f. Explosion, Collapse and Underground (UCX) exclusion deleted
  - g. Contractual Liability with respect to this Agreement
  - h. Broad Form Property Damage
  - i. Independent CONTRACTORS Coverage

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

2. **Automobile Liability:** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation/Employer’s Liability:** CONTRACTOR certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing work under this Agreement. To the extent CONTRACTOR has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement CONTRACTOR shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the CONTRACTOR’S profession, with limit no less than **\$1,000,000** per occurrence or claim This insurance shall be endorsed to include contractual liability applicable to this Agreement

and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the CONTRACTOR. “Covered Professional Services” as designed in the policy must

specifically include work performed under this Agreement.

5. **Umbrella or Excess Liability: Umbrella or Excess Insurance.** If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf,” with defense costs payable in addition to policy limits. CONTRACTOR shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the CITY indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
6. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. If CONTRACTOR maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to the CITY.

**Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status.** The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and the Automobile Liability policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.

**Primary Coverage.** For any claims related to this contract, the CONTRACTOR’S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR’S insurance and shall not contribute with it.

**Notice of Cancellation.** Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days’ prior written notice (10 days for nonpayment) has been given to the CITY.

**Waiver of Subrogation.** CONTRACTOR hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

**Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

**Claims Made Policies.** If any of the required policies provide claims-made coverage:

7. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
8. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract work.*
9. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of *three (3)* years after completion of contract work.

**Verification of Coverage.** CONTRACTOR shall furnish the CITY with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Special Risks or Circumstances.** CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



CERTIFICATE NUMBER: 75395525

REVISION NUMBER:

DATE (MM/DD/YYYY)

# CERTIFICATE OF LIABILITY INSURANCE

BEFORE THE POLICIES DESCRIBED HEREIN HAVE BEEN ISSUED BY THE INSURANCE COMPANY ABOVE FOR THE POLICY PERIOD INDICATED, REGARDLESS OF ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY   <input type="checkbox"/> SUBJECT   <input type="checkbox"/> LOCATION OTHER:	<input checked="" type="checkbox"/>		202221694	9/27/2022	9/27/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 20,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			202221694	9/27/2022	9/27/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB EXCESS LIAB						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N ANY PROPRIETOR/PARTNER/EXECUTIVE / OFFICER/MEMBER EXCLUDED? (Mandatory in NH) 1 / N/A If yes, describe under DESCRIPTION OF OPERATIONS below			57WECAE1U5F	9/27/2022	9/27/2023	1 PER (STATUTE) / 1 OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Los Altos Heritage Orchard Project  
 The City of Los Altos, the City Council, members of the City Council, its employees, representatives, agents and volunteers are named as additional insured on the General Liability policy per forms CG 2037 1219, CG 2010 1219

Digitally signed by Jon Maginot  
**Jon Maginot** D\_0\_x\_2023072015:14:03

**CERTIFICATE HOLDER**

City of Los Altos  
1 N. San Antonio Road  
Los Altos CA 94022

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John Scroope

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ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these

additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the

insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or